2013 IL App (4th) 120424-U

NO. 4-12-0424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 1, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
LYNN A. FATHAUER,	)	No. 10CF340
Defendant-Appellant.	)	
	)	Honorable
	)	Leo Zappa,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant's convictions centered on the testimony of an eyewitness who was an admitted thief, methamphetamine user, and drug dealer and who was charged with the same methamphetamine-related offense as the defendant are upheld as the testimony was supported by the surrounding circumstances.

(2) Defendant's allegation the information was void fails, as defendant did not establish the information failed to apprise him of the precise offense charged with sufficient specificity to allow him to prepare a defense and to plead a resulting conviction as a bar to future prosecution for the same conduct.

¶ 2 In January 2012, a jury found defendant, Lynn A. Fathauer, guilty of participation in methamphetamine manufacturing (720 ILCS 646/15(a)(2)(A) (West 2010)) and obstruction of justice (720 ILCS 5/31-4(a) (West 2010)). Defendant was sentenced to concurrent terms of 20 years' imprisonment for the methamphetamine offense and 3 years' imprisonment for obstruction. Defendant appeals, arguing (1) the State failed to prove him guilty of participation in metham-

phetamine manufacturing beyond a reasonable doubt; and (2) his obstructing-justice conviction must be reversed because the charge was void as it failed to identify the particular prosecution defendant allegedly obstructed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2010, defendant was charged with participation in methamphetamine manufacturing and obstructing justice. The State alleged defendant knowingly participated in the manufacture of less than 15 grams of methamphetamine or a substance containing methamphetamine on May 22, 2010. In the obstructing-justice charge, State alleged that same day "defendant, with the intent to obstruct the prosecution of Daron S. Trudeau, knowingly concealed evidence, in that he threw a glass jar containing a methamphetamine mixture into a grassy area."

¶ 5 In January 2012, a jury trial was held. Jeffrey Leininger, a Springfield police officer, testified he was on duty around noon on May 22, 2010. Officer Leininger went to Maaco to search for a Chevy Blazer and Daron Trudeau, because a detective wanted to speak to Trudeau about stolen car parts. Officer Leininger saw the Blazer and pulled his marked squad car next to it. Officer Leininger asked the driver if he could speak to him. The driver responded, "Why?" and continued to pull away. Officer Leininger got out of his squad car and told the driver to stop. The driver sped away. Officer Leininger got in his squad car, made a U-turn, and followed the Blazer. Officer Leininger lost sight of the vehicle for seconds. When he saw the Blazer again, it was going very slowly.

¶ 6 Officer Leininger initiated a traffic stop of the Blazer. Officer Leininger made contact with the driver, Trudeau, and told him "he was under arrest for basically obstruction, resisting, for not listening to [his] commands, and driving away." Officer Gerry Castles arrived

in another squad car. Officer Leininger arrested Trudeau and spoke with defendant, who was riding in the passenger seat of the Blazer. Officer Leininger observed white spots on defendant's jeans and shirt. Officer Leininger also noticed a white substance on the outside of the front passenger door. He asked both Trudeau and defendant if they had thrown anything out the window. Trudeau denied having done so. Defendant stated, "not that I know of." Officer Leininger identified a photo of the splatter he observed on the passenger door of the Blazer.

¶ 7 Officer Leininger testified defendant stated the spots on his clothing were caused by bleach. Defendant stated the splatter on the door was there when Trudeau picked him up in Decatur. Officer Leininger arrested defendant at the scene.

¶ 8 On cross-examination, Officer Leininger testified he did not smell anything when he was talking with Trudeau before Trudeau fled. At that time, Officer Leininger noticed the driver side window was down; he did not notice whether the passenger side window was down. Trudeau did not appear to be under the influence of a narcotic. Officer Leininger did not know if defendant appeared to be so. Defendant was cooperative when he was arrested.

¶ 9 Gerry Castles, a Springfield police officer, testified he was in a marked squad car and in full uniform around 12:15 p.m. on May 22, 2010. He was sent to back up Officer Leininger at a traffic stop. When Officer Castles arrived, he observed the Blazer in a lot behind a business. Officer Leininger had secured Trudeau and asked Officer Castles to take him to the station. Trudeau was placed in Officer Castles's squad car. Officer Castles then approached the passenger side of the Blazer. He saw Officer Leininger ask defendant to exit the vehicle. Defendant complied. While Officer Leininger and defendant spoke, Officer Castles observed "some white dried like residue substance on the outside of the vehicle and the passenger side."

He also noticed a similar substance on defendant's clothing. Officer Castles then went to the driver's side of the Blazer and searched the vehicle. When he entered the vehicle, Officer Castles noticed "a real strong ammonia smell" coming from the Blazer. Officer Castles testified ammonia was commonly tied to methamphetamine. Officer Castles found a blue bucket with some tubing directly behind the driver's seat. Inside the blue bucket was a glass jar and a measuring cup. The lid of the jar had clear tubing running into it and it was secured with sealant. A chalky white substance lined the inside of the tubing. The substance appeared to be dry. Officer Castles also observed wet clothing and wet carpeting in the back of the vehicle.

¶ 10 Officer Castles testified, after Officer Leininger told him the Blazer did not stop initially, he returned to the Maaco lot and began to trace the path to where the Blazer stopped. While doing this, Officer Castles found a mason jar in the grass approximately three to five feet from the curb. Approximately 20 feet later, he found "a glass smoking device" and approximately 20 feet further, he found "a small [Baggie] corner" with a white chalky or powdery substance. Officer Castles field-tested the white substance in the Baggie and it tested positive for methamphetamine.

¶ 11 On cross-examination, Officer Castles testified a special team was called to investigate because he found methamphetamine items. Officer Castles did not know if the glass jar was dusted for fingerprints.

¶ 12 William Todd Taylor, a sergeant with the Springfield police department, testified as follows: on May 22, 2010, he responded to a call regarding suspected methamphetamine. Taylor arrived at the scene and searched the Blazer. He found two bottles of lighter fluid, known ingredients for manufacturing methamphetamine, inside an open storage area of the passenger-

side door.

¶ 13 Josh Stern, an employee of the Illinois State Police, testified he worked in the Springfield Forensic Crime Laboratory. Stern tested powder contained in a bag (exhibit No. 14A) for the presence of a controlled substance. The bag contained 0.2 grams of a substance containing methamphetamine. Stern tested the substance found on defendant's jeans. He determined methamphetamine was present in that substance.

¶ 14 Daron Trudeau testified he was arrested on May 22, 2010, for unlawful participation in methamphetamine manufacturing. On that date, he was driving a Chevy Blazer. Trudeau went to Maaco that afternoon to pick up his last check from work. As he was leaving the Maaco parking lot, a police officer stated he wanted to talk with him. Trudeau told him he had nothing to say and left. He did not stop because he had methamphetamine in his car. After he pulled away, Trudeau handed defendant a mason jar with methamphetamine in it and told him to throw it out. Defendant threw the jar and its contents out the passenger window. Trudeau stated a bag containing methamphetamine and a pipe were also thrown out the window. Trudeau believed he disposed of those. After they disposed of the items, he pulled over for the police. A police officer took Trudeau from the vehicle and handcuffed him. Trudeau was placed in a squad car.

¶ 15 According to Trudeau, he was interviewed by the police and the State's Attorney's office. Trudeau testified he had not been promised anything for his testimony. Trudeau testified he picked up defendant at defendant's Decatur residence on May 21, 2010. They had been together 24 hours before the police picked them up. They had known each other "[p]robably five, six, seven years." Trudeau took some methamphetamine he cooked the day before "that needed to be smoked off" to defendant's house. By "smoked off," Trudeau meant the metham-

phetamine needed to be processed.

¶ 16 Trudeau testified he arrived with a jar containing liquids. To "smoke it off," he would use a generator with a hose, as well as muriatic acid. He would mix aluminum with the muriatic acid to make smoke, and methamphetamine formed at the bottom of the jar. At that point it would be wet. It would then be strained through coffee filters and let dry. The jar with the lid and tubing on it was the generator. The jar that was thrown out the window was used for "[s]moking it off." The substance in the Baggie was the final product.

¶ 17 When Trudeau arrived at defendant's house, "Barry" and Carla Fathauer, defendant's former sister-in-law, who lived there, were present. Trudeau asked them for filters or a cup. Once he had the final product, he let it dry and took it with him.

¶ 18 Trudeau testified he cooked more methamphetamine when defendant was with him in the Blazer. Defendant assisted by "look[ing] out while [Trudeau] was putting everything together" and by holding the generator when Trudeau "smoked it off" so it would not tip over. Trudeau held the hose into the liquid. After it was finished, Trudeau and defendant smoked some of the methamphetamine. The two went to Trudeau's sister's house and then on to Springfield. Defendant was with Trudeau when Trudeau purchased the lighter fluid. Trudeau obtained the anhydrous ammonia earlier by stealing it from tanks.

¶ 19 On cross-examination, Trudeau testified he had a trial date set for February 17, 2012. When asked if he expected anything for his testimony, Trudeau stated the following, "I'm sure I'll probably get probation, or something. I've never been in trouble before." Trudeau had not been caught stealing anhydrous ammonia. He denied stealing car parts or knowing they were stolen when he purchased them. Trudeau was not arrested in regard to the car parts.

¶ 20 Trudeau denied tossing all of the items out the passenger window and, in so doing, spilling some liquid on defendant's jeans. When asked, "How much meth do you do a day?," Trudeau responded, "I probably do half a gram a day to a gram." Trudeau said he would sell it when he needed the money. Trudeau denied asking the State's Attorney's office what sentence he would receive. Trudeau stated he did not "because [he] figured the charge [was] probationable." Trudeau testified he had probably been making methamphetamine for four or five months before his arrest. Trudeau involved others to purchase pills for him. Trudeau admitted his testimony differed from what he initially told the police during his three interviews. Trudeau stated he had twice met with the State's Attorney's office, including once for probably 10 minutes the day before his testimony. His lawyer was present during both meetings.

¶ 21 Shane Overby, a detective with the Springfield police department, testified, on May 22, 2010, he interviewed Trudeau and defendant. Detective Overby interviewed Trudeau twice. During an interview with defendant, defendant was questioned about his fingerprints and he mentioned he touched a jar and the blue bucket that was found in the truck. Detective Overby testified defendant said his fingerprints might be on those items because he was cleaning out Trudeau's truck.

¶ 22 On cross-examination, Detective Overby stated defendant cooperated during the interviews. Defendant admitted smoking crack but denied using methamphetamine. Defendant told Detective Overby Trudeau threw the stuff out the window. Defendant said, "I'm not touching it."

¶ 23 Brian Hayes, a special agent with the Illinois State Police, testified he worked on the Illinois State Police Methamphetamine Response Team, which investigates

methamphetamine-related activities and dismantles methamphetamine labs. On May 22, 2010, Agent Hayes was asked to "process" Trudeau's Blazer. Inside the Blazer, Agent Hayes found items consistent with the production of methamphetamine, including sulfuric acid. Agent Hayes performed a field test on the white substance on the passenger door of the Blazer. The test was positive for methamphetamine.

¶ 24 According to Agent Hayes, he then went to the Springfield police department to interview Trudeau and defendant. Agent Hayes asked defendant about the white substance outside the passenger window. At first, defendant denied anything had been thrown out the window and said he did not know anything about it. After Agent Hayes told him a white substance was found on the door, defendant said Trudeau had taken a jar from the console and threw it out the passenger-side window. Agent Hayes told defendant he did not believe the jar could have landed where it was found based upon that statement. Agent Hayes explained the white substance was found directly under the passenger-side window and confined to the passenger door. No areas in the vehicle had the same white substance. Defendant admitted throwing out the pipe.

¶ 25 Agent Hayes testified defendant, during the interview, stated he smoked crack and had not smoked methamphetamine for approximately eight years. When Agent Hayes asked defendant if his fingerprints would be on anything in the vehicle, defendant initially stated they would not. He then told Agent Hayes his fingerprints may be found on a blue bucket and on its contents. Agent Hayes stated his fingerprints may be on those items because he placed some rhubarb inside the bucket the night before. Agent Hayes found rhubarb in a plastic bag inside the Blazer.

¶ 26 Defendant called Carla Fathauer, his ex-sister-in-law, to testify. On May 22, 2010, defendant resided with Carla. Carla testified Trudeau picked up defendant around 3 a.m. Before that time, defendant was in her home on the couch all day.

¶ 27 On cross-examination, Carla testified Trudeau picked up defendant "real close to 3:00" because defendant wanted to get some beer. Carla admitted providing a written statement to defense counsel a week before trial stating Trudeau picked up defendant at 2. Carla acknowledged the discrepancy but stated she knew "it was after 2:00, because [she knew] he wanted to get beer." Carla did not contact the police with this information.

¶ 28 The jury found defendant guilty of the charged offenses. After a March 2012 sentencing hearing, the trial court sentenced defendant to concurrent prison terms of 20 years for the methamphetamine offense and 3 years for obstructing justice.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 A. Reasonable Doubt

¶ 32 Defendant argues the State failed to prove him guilty of both offenses beyond a reasonable doubt. Defendant contends only one witness testified defendant participated in methamphetamine production and threw the jar from the Blazer. That witness, Trudeau, was "an admitted liar, methamphetamine addict, and drug dealer," who had a motive to testify falsely. Defendant maintains, because of this, Trudeau's testimony was unbelievable and his convictions should be overturned. In support, defendant relies upon *People v. Strother*, 53 Ill. 2d 95, 99, 290 N.E.2d 201, 204 (1972) (quoting *People v. Lewis*, 25 Ill. 2d 396, 399, 185 N.E.2d 168, 169 (1962)) (" 'the testimony of a narcotics addict is subject to suspicion due to the fact that habitual

users of narcotics become notorious liars' ") to support his conclusion Trudeau's testimony was discredited by his status as a thief and methamphetamine addict.

¶ 33 When considering a challenge to the sufficiency of the evidence supporting a criminal conviction, this court considers the evidence "in the light most favorable to the prosecution" and determines whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 559 (2005). In undertaking this task, we carefully examine the entire record, not just the evidence supporting the State's theory of the case (see *People v. Wheeler*, 226 Ill. 2d 92, 117-18, 871 N.E.2d 728, 742 (2007)), "while giving due consideration to the fact that the court and jury saw and heard the witnesses" (*People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999)).

¶ 34 When a criminal conviction is based on eyewitness testimony, as here, an appellate court must determine whether "a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279, 818 N.E.2d 304, 308 (2004). A jury's decision to accept eyewitness testimony is entitled to great deference. *Id*. at 280, 818 N.E.2d at 308. However, that decision is not conclusive and not binding on a court of review, as "[r]easonable people may on occasion act unreasonably." *Id.* This court will reverse a conviction based on eyewitness testimony where "the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.*

¶ 35 The evidence does not compel the conclusion no reasonable person could accept Trudeau's testimony beyond a reasonable doubt. The testimony of a drug addict is scrutinized with caution, but the testimony of such an addict "may be sufficient to sustain a conviction if

credible under the surrounding circumstances." *People v. Norman*, 28 Ill. 2d 77, 82, 190 N.E.2d 819, 822 (1963). The surrounding circumstances support Trudeau's testimony defendant assisted in the manufacture of methamphetamine. For instance, Trudeau testified defendant held the glass jar or generator while Trudeau fed the tube into the liquid mixture. During his interview with Agent Hayes, defendant, who at first denied touching the blue bucket or its contents, admitted his fingerprints may be found on the glass jar and the blue bucket. While defendant then told Agent Hayes he touched the jar and the bucket when he put rhubarb inside it, the rhubarb was not found in the bucket. It was found in a plastic bag within the Blazer. Making, as we must, all reasonable inferences in favor of the prosecution (see *Cunningham*, 212 Ill. 2d at 280, 818 N.E.2d at 308), the jury was entitled to infer defendant admitted touching the methamphetamine-manufacturing materials but lied about the reason for doing so.

¶ 36 Other facts also support Trudeau's testimony. When Officer Castles entered the Blazer, he noticed a strong ammonia smell. Agent Hayes testified he told defendant he did not believe Trudeau threw out the jar through the passenger window given the splatter on the outside of the passenger door and the lack of any splatter on the inside of the passenger door. Defendant, when first confronted by police regarding the methamphetamine, did not identify Trudeau as the sole manufacturer. Defendant lied about the spots on his clothing.

¶ 37 Defendant emphasizes Carla's testimony contradicts Trudeau's, casting doubt on its reliability. This argument is unconvincing. First, the record supports the conclusion the jury found Carla's testimony lacked credibility. Carla and defendant resided together, which shows a potential for bias, and her testimony regarding when defendant left the residence with Trudeau differed by one hour from the time she gave defendant's counsel just one week before. Second,

Carla's testimony, even if accepted by the jury as credible, still left defendant and Trudeau ample time to manufacture methamphetamine.

¶ 38 Defendant contends Trudeau, who faced the same methamphetamine-manufacturing charge, had a motive to lie. The jury was informed of Trudeau's conduct and pending methamphetamine-related charges, as well as Trudeau's alleged purchase of stolen auto parts. Defense counsel cross-examined Trudeau regarding his motive to lie and of his anticipation of receiving probation for the offense. The jury, who heard Trudeau and the other witnesses testify, apparently believed Trudeau, in spite of his alleged motive to lie and his methamphetamine addiction. This determination lies within the role of the jury. See *People v. Whitlock*, 174 Ill. App. 3d 749, 763, 528 N.E.2d 1371, 1379 (1988) ("It is the jury's function to determine the credibility of the witnesses, the weight to be given their testimony, and inferences to be drawn therefrom.") The record does not establish this decision was unreasonable or unreliable.

¶ 39 Defendant contends no evidence supports Trudeau's testimony on the obstructing-justice charge. Defendant states the only testimony is that Trudeau, while admitting he thought he threw the pipe and Baggie through the passenger window, recalled defendant threw out the mason jar. Defendant argues no other evidence supports Trudeau's testimony defendant threw the jar out the window, as no eyewitnesses testified and the jar was not dusted for fingerprints.

¶ 40 The test is not that there must be other direct evidence of the offense to sustain a conviction based on a lone witness's testimony. The test is whether the testimony is "credible under the surrounding circumstances." *Norman*, 28 Ill. 2d at 82, 190 N.E.2d at 822. A splatter was directly under the passenger-door window on the outside of the Blazer. No splatter was inside the Blazer. Defendant initially denied knowing anything was thrown out the window.

Defendant later admitted he threw the pipe out the window. Trudeau's testimony, believed by the jury, is credible under the circumstances. A reasonable person could accept Trudeau's testimony beyond a reasonable doubt. We cannot overturn the obstruction conviction on this ground. See *Cunningham*, 212 Ill. 2d at 280, 818 N.E.2d at 308.

¶ 41 B. Charging Instrument

¶ 42 Defendant next argues the information failed to state the specific prosecution he allegedly obstructed and thus his obstructing-justice conviction should be overturned. Defendant, citing *People v. Alvarado*, 301 Ill. App. 3d 1017, 1023, 704 N.E.2d 937, 941 (1998), contends, because the information fails to provide an element of the offense, the charge is void.

¶ 43 Section 111-3(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(a) (West 2010)) specifies the pleading requirements for a criminal charge. Section 111-3(a) requires the following:

> "(a) A charge shall be in writing and allege the commission of an offense by:
>
> (1) Stating the name of the offense;
>
> (2) Citing the statutory provision alleged to have been violated;
>
> (3) Setting forth the nature and elements of the offense charged;
>
> (4) Stating the date and county of the offense as definitely as can be done; and
>
> (5) Stating the name of the accused,

> if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty." *Id.*

¶ 44 Defendant was charged by information for obstruction of justice. The information states the following in relevant part:

> "[Defendant] of said County and State, on or about the 22nd day of May in the year Two Thousand and Ten, and within the County of Sangamon and State of Illinois, committed the offense of OBSTRUCTING JUSTICE, in that said defendant, with the intent to obstruct the prosecution of Daron S. Trudeau, knowingly concealed evidence, in that he threw a glass jar containing a methamphetamine mixture into a grassy area in violation of Criminal Code of 1961, as amended, 720 ILCS 5/31-4(a) ***."

¶ 45 In Illinois, a charging instrument's sufficiency is judged differently based on the timing of the sufficiency challenge. "When an information is attacked before trial, the information must strictly comply with the pleading requirements" of section 111-3(a). *People v. Smith*, 337 Ill. App. 3d 819, 823, 786 N.E.2d 1121, 1124 (2003). The State's failure to allege one element of the offense charged "is a fundamental defect that renders the complaint void." *Alvarado*, 301 Ill. App. 3d at 1023, 704 N.E.2d at 941. When an information is challenged for the first time on appeal, it will be deemed sufficient when it " 'apprise[s] the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a

resulting conviction as a bar to future prosecution arising out of the same conduct.' " *Smith*, 337 Ill. App. 3d at 823, 786 N.E.2d at 1124 (quoting *People v. Pujoue*, 61 Ill. 2d 335, 339, 335 N.E.2d 437, 440 (1975)). The court of review thus considers whether the alleged defect in the information prejudiced the defendant in the preparation of his defense. *People v. Hughes*, 229 Ill. App. 3d 469, 472, 592 N.E.2d 668, 669 (1992). Unlike when a sufficiency challenge is mounted before trial, the prosecution's failure to allege an element of the offense "does not necessarily violate the appellate sufficiency standard." *Smith*, 337 Ill. App. 3d at 823, 786 N.E.2d at 1124.

¶ 46 On appeal, defendant mistakenly bases his argument the charging instrument is void on the *Alvarado* standard. In *Alvarado*, the sufficiency of the charging instruments was challenged *before* trial. See *Alvarado*, 301 Ill. App. 3d at 1019-21, 704 N.E.2d at 939-40. Here, the challenge to the sufficiency of the information was not raised before trial but on appeal. To prevail, defendant would thus have to show the charging information failed to apprise him of the " 'precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct.' " *Smith*, 337 Ill. App. 3d at 823, 786 N.E.2d at 1124 (quoting *Pujoue*, 61 Ill. 2d at 339, 335 N.E.2d at 440).

¶ 47 Defendant's argument based on *Alvarado* is misdirected and fails. In his reply brief, defendant attempts to fix this error by referencing the proper standard: "[t]he information charging [defendant] with obstruction of justice should have detailed the exact prosecution of Mr. Trudeau that he allegedly obstructed, in order to set forth 'the nature and elements of the offense charged,' and to afford [defendant] the opportunity to adequately prepare his defense and to protect against any double[-]jeopardy concerns." Defendant forfeited this contention by not

raising it in his opening brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief."). Defendant also made no effort to argue he was prejudiced by the alleged defect, and the record does not show he suffered any prejudice. Unlike other obstruction cases where no specific act by the defendant was identified in the charging instrument (see e.g., *Hughes*, 229 Ill. App. 3d at 470-71, 592 N.E.2d at 669; *People v. Gerdes*, 173 Ill. App. 3d 1024, 1027-28, 527 N.E.2d 1310, 1313 (1988)), the charging instrument here stated the precise act for which he was charged: "he threw a glass jar containing a methamphetamine mixture in a grassy area." Defendant was aware of the conduct he allegedly committed and defended this allegation at trial by arguing the evidence showed Trudeau threw the jar and the State did not show defendant's fingerprints were on it.

¶ 48 Defendant's argument the charging instrument does not protect him against double jeopardy fails. "The day has passed when an indictment define[s] the limits of jeopardy." *People v. Long*, 55 Ill. App. 3d 764, 773, 370 N.E.2d 1315, 1322 (1977). Proof of a prior prosecution to protect a defendant from being twice placed in jeopardy may be established by referring to the *record*. *Id.* In this case, the conduct and the offense for which defendant was convicted is readily discerned from the record. He is protected against double jeopardy.

¶ 49 III. CONCLUSION

¶ 50 We affirm the trial court's judgment. We grant the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 51 Affirmed.